

**35A-4-304 Special provisions regarding transfers of unemployment experience and assignment rates.**

- (1) As used in this section:
  - (a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.
  - (b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal Revenue Code of 1986.
  - (c) "Trade or business" includes the employer's workforce.
  - (d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or willful nondisclosure.
- (2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall apply regarding assignment of rates and transfers of unemployment experience.
- (3)
  - (a) If an employer transfers its trade or business, or a portion of its trade or business, to another employer and, at the time of the transfer, there is common ownership, management, or control of the employers, then the unemployment experience attributable to each employer shall be combined into a common experience rate calculation.
  - (b) The contribution rates of the employers shall be recalculated and made effective upon the date of the transfer of trade or business as determined by division rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (c)
    - (i) If one or more of the employers is a qualified employer at the time of the transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of this section shall be assigned an overall contribution rate under Subsection 35A-4-303(4), using combined unemployment experience rating factors, for the rate year during which the transfer occurred and for the subsequent three rate years.
    - (ii) If none of the employing units is a qualified employer at the time of the transfer, then all employing units that are party to the transfer described in Subsection (3)(a) shall be assigned the highest overall contribution rate applicable at the time of the transfer to any employer who is party to the acquisition for the rate year during which the transfer occurred and for subsequent rate years until the time when one or more of the employing units is a qualified employer.
    - (iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified employer, all the employing units shall be assigned an overall rate under Subsection 35A-4-303(4), using combined unemployment experience rating factors for subsequent rate years, not to exceed three years following the year of the transfer.
  - (d) The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of its trade or business when, as the result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and the trade or business is now performed by the employer to whom the workforce is transferred.
- (4)
  - (a) Whenever a person is not an employer under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business may not be transferred to that person if the division finds that the person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.
  - (b) The person shall be assigned the applicable new employer rate under Subsection 35A-4-303(5).

- (c) In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the division shall use objective factors which may include:
  - (i) the cost of acquiring the business;
  - (ii) whether the person continued the business enterprise of the acquired business;
  - (iii) how long the business enterprise was continued; or
  - (iv) whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.
- (5)
  - (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of any of those subsections or provisions, the person is subject to the following penalties:
    - (i)
      - (A) If the person is an employer, then the employer shall be assigned an overall contribution rate of 5.4% for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.
      - (B) If the person's business is already at 5.4% for any year, or if the amount of increase in the person's rate would be less than 2% for that year, then a penalty surcharge of contributions of 2% of taxable wages shall be imposed for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.
    - (ii)
      - (A) If the person is not an employer, the person shall be subject to a civil penalty of not more than \$5,000.
      - (B) The fine shall be deposited in the penalty and interest account established under Section 35A-4-506.
  - (b)
    - (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this section may be prosecuted as unemployment insurance fraud.
    - (ii) The determination of the degree of an offense shall be measured by the total value of all contributions avoided or reduced or contributions sought to be avoided or reduced by the unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to identify the transfer or acquisition of a business for purposes of this section.
- (7) This section shall be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

Amended by Chapter 15, 2012 General Session